

ASSEMBLY BILL

No. 1043

Introduced by Assembly Member Harman

February 22, 2005

An act to amend Section 481.5 of, and to repeal Section 393 of, the Insurance Code, relating to insurance premiums.

LEGISLATIVE COUNSEL'S DIGEST

AB 1043, as introduced, Harman. Insurance: unearned premium.

Existing law requires that, whenever any admitted or nonadmitted insurer rejects, declines, or cancels any of certain policies of insurance and the unearned premium is tendered to an insurance broker or agent of record as the insurer's agent, the unearned premium be tendered by the broker or agent to the insured or the person entitled thereto within 30 days of his or her receipt of the unearned premium from the insurer, except as specified.

This bill would delete the above requirement.

Existing law requires that, whenever an insurer endorses, rejects, declines, cancels, or surrenders any of certain automobile or property insurance policies, the unearned premium be tendered to the insured or to the person entitled thereto or to the insurance agent of record as the insurer's agent for transmittal within 25 days after the cessation or amendment of coverage. Existing law requires that, if this unearned premium is tendered to the insurer's agent, the agent tender this premium to the insured or to the person entitled to the premium within a specified period after the agent receives the premium.

Existing law requires that whenever a policy not covered by the above provisions is canceled pursuant to certain provisions of law relating to premium financed policies, the unearned premium be tendered to the person entitled thereto or to the insurance agent of

record as the insurer's agent for transmittal within 120 days after the cessation of coverage.

This bill would revise and recast these provisions. The bill would apply the provisions to all policies of personal lines insurance. It would eliminate the 120-day deadline for the return of unearned premium for premium financed policies, and would apply the 25-day deadline described above. The bill would impose a 60-day deadline for the return of unearned premium when an insurer endorses, rejects, declines, cancels, or surrenders a certain type of commercial insurance policy, except as specified.

The bill would impose specified requirements on insurers, brokers, and others with respect to returning unearned premiums, providing notice, and applying offsets to amounts owed to insureds. It would require an insurer to provide an accounting to the insured regarding the calculation of an unearned premium refund, and would require the Insurance Commissioner to adopt regulations regarding this accounting.

The bill would make other technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 393 of the Insurance Code is repealed.
- 2 ~~393. (a) Whenever any admitted or nonadmitted insurer~~
- 3 ~~rejects, declines, or cancels any policy of insurance, exclusive of~~
- 4 ~~commercial insurance risk, and the unearned premium is~~
- 5 ~~tendered to an insurance broker or agent of record as the insurer's~~
- 6 ~~agent, such unearned premium shall be tendered by the broker or~~
- 7 ~~agent to the insured or the person entitled thereto within 30 days~~
- 8 ~~of his or her receipt of such unearned premium from the insurer~~
- 9 ~~except as provided in subdivision (b). Any unearned premium~~
- 10 ~~received by a broker or agent not tendered within the time~~
- 11 ~~specified above shall bear interest at the rate of 10 percent per~~
- 12 ~~annum from and after such 30 days, to be paid by the broker or~~
- 13 ~~agent.~~
- 14 ~~(b) The broker or agent may, as an alternative to the provisions~~
- 15 ~~of subdivision (a), apply the amount of unearned premium if not~~
- 16 ~~previously assigned to other premiums due, if such broker or~~
- 17 ~~agent gives specific written notice of such application to the~~

1 insured within 30 days of the broker's or agent's receipt of such
2 unearned premiums.

3 SEC. 2. Section 481.5 of the Insurance Code is amended to
4 read:

5 481.5. (a) Whenever an insurer endorses, rejects, declines,
6 cancels, or surrenders a policy of *personal lines* insurance ~~as~~
7 ~~defined in subdivision (a) of Section 660 or Section 675, or such~~
8 ~~a policy of insurance as defined in subdivision (a) of Section 660~~
9 ~~or Section 675~~ is canceled pursuant to Section 673, the *insurer*
10 *shall tender the gross unearned premium shall be tendered to the*
11 *insured or to the person entitled thereto or to the insurance agent*
12 *of record as the insurer's agent for transmittal within 25 days*
13 *after the cessation or amendment of coverage due to*
14 *endorsement, cancellation, rejection, surrender, or rescission. If*
15 *this unearned premium is tendered to the insurer's agent, the*
16 *agent shall tender this premium to the insured or to the person*
17 *entitled to the premium within 15 days after the agent receives*
18 *the premium. to the insured, unless either of the following*
19 *applies:*

20 (1) *If the insurer has been provided with a written assignment*
21 *in which the insured has transferred his or her right to receive*
22 *the unearned premium to a broker-agent or to a premium finance*
23 *company, the insurer may, at its election, tender the gross or net*
24 *unearned premium, as applicable, to the broker-agent or*
25 *premium finance company.*

26 (2) *If the insurer has been provided with a copy of a finance*
27 *agreement between the insured and a premium finance company*
28 *indicating that the insured has transferred his or her right to*
29 *receive the unearned premium to the premium finance company,*
30 *the insurer may, at its election, tender the gross or net unearned*
31 *premium, as applicable, to the premium finance company.*

32 (b) *The unearned premium shall be tendered to the*
33 *appropriate party within 25 days after the event that generated*
34 *the unearned premium, or within 25 days after receipt by the*
35 *insurer of notice from a premium finance company of a*
36 *cancellation pursuant to Section 673. Any unearned premium not*
37 *tendered the insurer fails to tender within the time specified*
38 *above shall bear interest at the rate of 10 percent per annum from*
39 *and after the date on which the unearned premium is was*
40 *required to be tendered. An agent or broker shall only be liable*

1 ~~for the payment of interest after 15 days from the date the agent~~
2 ~~or broker has received the funds for the amount of the unearned~~
3 ~~premium from the insurer, or from the date the agent or broker~~
4 ~~has received notification from the insurer that a credit or payment~~
5 ~~for the amount of the unearned premium has been applied to an~~
6 ~~agent's or broker's account. That interest imposition shall not~~
7 ~~apply to any insurer in conservatorship or liquidation and shall~~
8 ~~constitute the sole penalty paid to the insured for a failure to~~
9 ~~refund an unearned premium. For the purposes of this section,~~
10 ~~the tender of any unearned premium to the insured shall be~~
11 ~~deemed complete upon the deposit of the unearned premium in~~
12 ~~the United States mail, prepaid, addressed to the named insured~~
13 ~~at the last known address.~~

14 ~~(b) Whenever a policy is canceled pursuant to Section 673,~~
15 ~~other than a policy as defined in subdivision (a) of Section 660 or~~
16 ~~Section 675, the unearned premium shall be tendered to the~~
17 ~~person entitled thereto or to the insurance agent of record as the~~
18 ~~insurer's agent for transmittal within 120 days after the cessation~~
19 ~~of coverage due to cancellation. Any unearned premium not~~
20 ~~tendered within the time specified above shall bear interest at the~~
21 ~~rate of 10 percent per annum from and after that 120 days. That~~
22 ~~interest imposition shall not apply to any insurer in~~
23 ~~conservatorship or liquidation and shall constitute the sole~~
24 ~~penalty paid to the insured for a failure to refund an unearned~~
25 ~~premium.~~

26 *(c) (1) Whenever an insurer endorses, rejects, declines,*
27 *cancels, or surrenders a policy of commercial insurance, as*
28 *defined in Section 675.5, the unearned premium shall be*
29 *tendered as provided in subdivision (a) of this section within 60*
30 *days.*

31 *(2) Notwithstanding paragraph (1), an insurer shall not be*
32 *required to tender the unearned premium within 60 days if the*
33 *final unearned premium amount cannot be determined due to the*
34 *insured's failure, in breach of a policy requirement, to cooperate*
35 *with the insurer in a premium audit.*

36 *(d) For the purpose of this section, the following definitions*
37 *apply:*

38 *(1) "Gross unearned premium" means the unearned portion*
39 *of the full amount of the premium charged to the insured,*

1 including the unearned portion of any amount of the premium the
2 insurer allocated to a broker-agent as commission.

3 (2) "Net unearned premium" means the gross unearned
4 premium minus the unearned commission.

5 (e) The interest penalty required by this section shall not apply
6 to any insurer in conservatorship or liquidation, nor shall such
7 an insurer be subject to any other penalty for failure to remit
8 unearned premium in accordance with the time periods required
9 by this section.

10 (f) (1) An assignment under paragraph (1) of subdivision (a)
11 shall be valid only for the purpose of paying the broker-agent for
12 a premium the insured owes the broker-agent on the same or
13 another policy.

14 (2) If the insured notifies the insurer, 15 or more days after the
15 insurer's tender of unearned premium to the broker-agent, that
16 the broker-agent has failed either to remit the unearned premium
17 to the insured or to issue to the insured an accounting of an offset
18 permitted by Section 1735.5, the insurer shall, within an
19 additional 15 days, either tender the unearned premium directly
20 to the insured or provide the insured with the broker-agent's
21 accounting of an offset permitted by Section 1735.5.

22 (3) Whenever an insurer tenders the net rather than gross
23 unearned premium to a broker-agent or premium finance
24 company, the insurer shall contemporaneously notify the
25 broker-agent of the amount of the unearned commission.

26 (4) If an insurer elects to tender the net rather than the gross
27 unearned premium to a premium finance company, the insurer
28 shall document that the broker-agent tendered unearned
29 commission to the premium finance company within 25 days after
30 the event that generated the unearned premium, or within 25
31 days after receipt by the insurer of notice from a premium
32 finance company of a cancellation pursuant to Section 673.

33 (g) Whenever a broker-agent receives unearned premium from
34 an insurer or its agent, a premium finance company, another
35 broker-agent, or any other person on account of an insured, the
36 broker-agent receiving the money shall tender that money to the
37 insured, or account to the insured for any offset permitted by
38 Section 1735.5, within 15 days. If the broker-agent fails to tender
39 payment of the unearned premium within 15 days, the
40 broker-agent shall pay the insured interest at the rate of 10

1 *percent per annum from the date on which the money was*
2 *required to be tendered.*

3 *(h) In addition to the required unearned premium refund, an*
4 *insurer shall provide an insured with an accounting and*
5 *explanation of how the amount of the refund was calculated. The*
6 *explanation shall be clear, concise, and easy to comprehend. The*
7 *commissioner shall adopt regulations setting forth standards to*
8 *govern this subdivision.*

9 *(i) For purposes of subdivisions (a) ~~and (b)~~ to (c), inclusive,*
10 *where if the unearned premium is not assigned as security to a*
11 *premium finance agency pursuant to a premium finance*
12 *agreement and where the amount of unearned premium is less*
13 *than twenty-five dollars (\$25), tender of unearned premium shall*
14 *include applying the amount of unearned premium either to the*
15 *renewal premium at the next renewal date or to other premiums*
16 *due, provided written notice of either application is given to the*
17 *insured within 30 days after the endorsement, rejection,*
18 *declination, cancellation, or surrender of a policy of insurance.*
19 *At the time of endorsement or surrender of a policy of insurance*
20 *or, within 15 days after the mailing of the written notice required*
21 *by this subdivision, the insured may request in writing that the*
22 *unearned premium be tendered as provided in subdivisions (a)*
23 *~~and (b)~~ to (c), inclusive. Whenever the amount of unearned*
24 *premium is less than five dollars (\$5), tender shall be effective*
25 *and the written notice required by this subdivision shall not be*
26 *required ~~provided~~ if the unearned premium is applied either to*
27 *the renewal premium at the next renewal date or to other*
28 *premiums due.*